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EXAMINER

ENGLAND, DAVID E

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/577,224
Filing Date: May 23, 2000
Appellant(s): LEWIS, LUNDY

MAILED

MAY 17 2007

Technology Center 2100

S. Jafar Ali Reg. No. 58,780
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/03/2007 appealing from the Office action mailed 06/01/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|---------|-----------------|---------|
| 6108700 | Maccabee et al. | 8-2000 |
| 6356282 | Roytman et al. | 3-2002 |
| 6314103 | Medhat et al. | 11-2001 |
| 6230203 | Koperda et al. | 5-2001 |

6304892

Bhoj et al.

10-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 23, 24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maccabee et al. (6108700) (hereinafter Maccabee) in view of Roytman et al. (6356282) (hereinafter Roytman) in further view of Medhat et al. (6314103) (hereinafter Medhat).

As per claim 1, as closely interpreted by the Examiner, Maccabee teaches a method for managing network services associated with a service level management domain to provide service level management, the method comprising the steps of, (e.g. col. 6, lines 10 – 30 & col. 7, lines 37 – 60):

monitoring, by a plurality of monitoring agents, operational characteristics of a network service associated with a service level management domain and supporting one or more business processes under service level management, each monitoring agent detecting events of a select type of the associated operational characteristics from the network service and mapping such

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events into alarms, (e.g. col. 7, lines 37 – 60, “*sensors*” to also be interpreted as “*agents*”

“When appropriate, the sensor generates an event that describes the change in state, when the where it has occurred, and any extra data necessary to uniquely identify the event(e.g., an event describing that a file has been opened might include the name of the file as well as the file handle returned by the open activity for use in subsequent file accesses). ”);

transmitting the alarms from the plurality of monitoring agents to an alarm correlation agent,

which analyzes the alarms to produce correlated alarms, (e.g. col. 7, line 61 – col. 8, line 26,

“...any additional correlation data useful for later associating the event with other events to form transactions”); but does not specifically teach transmitting the correlated alarms to an

enterprise management system to analyze across the network causes of the correlated alarms;

the alarms and the correlated alarms are indicative of a degradation in service level or potential degradation in service level.

Roytman also teaches transmitting the alarms from the plurality of monitoring agents to an alarm correlation agent, which analyzes the alarms to produce correlated alarms, (e.g. col. 5, lines 13 – 55); and

transmitting the correlated alarms to an enterprise management system to analyze across the

network causes of the correlated alarms, (e.g. col. 2, lines 34 – 51, “*maps each managed-object-based alarm to a corresponding node...*”). It would have been obvious to one of ordinary skill in

the art at the time the invention was made to combine Roytman with Maccabee because utilizing

a function that analyzes information across the network and the causes of the correlated alarms

could isolate specific areas that are malfunctioning, (e.g., a down link), and have the network

reroute information to other areas that are not affected so to lower latency in the system.

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Medhat teaches the alarms and the correlated alarms are indicative of a degradation in service level or potential degradation in service level, (e.g., col. 8, line 54 – col. 9, line 15, “... *react to any congestion that occurs, and to react when signs of impending congestion are found.*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Medhat with the combine systems of Maccabee and Roytman because notifying of congestion or imminent congestion conditions, could cause allocating resources more expeditiously, and forcing the bandwidth allocation system to re-arbitrate user parameters with the devices.

As per claim 24, as closely interpreted by the Examiner, Maccabee teaches the step of determining a state of the business process from the value, (e.g. col. 3, lines 25 – 38).

As per claim 26, as closely interpreted by the Examiner, Maccabee teaches the service level management domain comprises, an enterprise network, (e.g. col. 3, lines 25 – 38).

As per claim 27, as closely interpreted by the Examiner, Maccabee teaches a method for providing an entity with service level management of a business process, the method comprising the steps of:

monitoring a business process having at least one service associated with a service level management domain to provide service level management for an entity performing a business process, (e.g. col. 7, lines 37 – 60);

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collecting data on one or more resources of a network associated with the service level management domain, the network being capable of performing one or more functions to provide the entity with a service to allow the entity to perform the business process, (e.g. col. 7, lines 37 – 60);

monitoring one or more parameters from the collected data the one or more parameter providing an indication of an operational characteristic of the service provided by the network, (e.g. col. 7, lines 37 – 60), but does not specifically teach the service having a predefined state expressed as a range of values;

determining from the operational characteristic a value from the range of values, the value being a performance index of the service associated with the service level management domain indicating one of an acceptable state of the service, an unacceptable state of the service, or an imminent change from an acceptable state to an unacceptable state of the service; and taking an action to effect a change to the one or more parameters if the value indicates either the unacceptable state of the service or the imminent change in the state of the service.

Roytman teaches the service having a predefined state expressed as a range of values, (e.g., col. 7, lines 46 – 65);

determining from the operational characteristic a value from the range of values, the value being a performance index of the service associated with the service level management domain indicating one of an acceptable state of the service, an unacceptable state of the service, or an imminent change from an acceptable state to an unacceptable state of the service, (e.g. col. 5, lines 13 – 55); and

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Medhat teaches taking an action to effect a change to the one or more parameters if the value indicates either the unacceptable state of the service or the imminent change in the state of the service, (e.g., col. 8, line 54 – col. 9, line 15): It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Medhat and Roytman with Maccabee because of similar reasons stated above.

Claim 23 is rejected for similar reasons as stated above.

Claims 3 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maccabee, Roytman and Medhat as applied to claim 1, and in further view of Koperda et al. (6230203) (hereinafter Koperda).

As per claim 3, as closely interpreted by the Examiner, Maccabee, Roytman and Medhat teach all that is described above that is similar in scope to claim 1, Roytman further teaches reporting, to a user, information regarding at least one of a group including availability, faults, configuration, integrity, security, reliability, performance and accounting of the measured level of service, (e.g. col. 2, line 18 – col. 3, line 44, “*node status is propagated to application like the Solstice EM Viewer*” & col. 7, line 35 – col. 8, line 34, “*window display 600*”); and the component information representing operational data of one or more monitored components, (e.g. col. 2, line 18 – col. 3, line 44, “*node status is propagated to application like the Solstice EM Viewer*” & col. 7, line 35 – col. 8, line 34, “*window display 600*”), but does not specifically teach relating component information to a service upon which a business process depends,

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determining a state of the business process based upon the component information, wherein the component information determines a measured level of service and wherein the level of service affects the operation of the business process. Koperda teaches relating component information to a service upon which a business process depends, (e.g. col. 1, line 65 – col. 2, line 41, “*quality of play, parameters we considered include access time, delivery duration, bandwidth...*” & col. 4, lines 2 – 64, “*collects and reports statistics for level of service*”),

determining a state of the business process based upon the component information, wherein the component information determines a measured level of service and wherein the level of service affects the operation of the business process, (e.g. col. 1, line 65 – col. 2, line 41, “*quality of play, parameters we considered include access time, delivery duration, bandwidth...*” & col. 4, lines 2 – 64, “*collects and reports statistics for level of service*”). It would have been obvious to one skilled in the art at the time the invention was made to combine Koperda with the combine system of Maccabee, Roytman and Medhat because utilizing a display to view the state of the business process could aid in a more efficient transmission system for when a transmission path is “jammed” and data needs to be redirected to a different path so the data can be delivered to its destination.

As per claim 4, Maccabee, Roytman and Medhat do not specifically teach determining service parameters to measure the level of service. Koperda teaches determining service parameters to measure the level of service, (e.g. col. 1, line 65 – col. 2, line 41 & col. 4, lines 2 – 64, “*collects and reports statistics for level of service*”). It would have been obvious to one skilled in the art at the time the invention was made to combine Koperda with the combine system of Maccabee and

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Roytman because of similar reasons as stated above. Furthermore, measuring the level of service aids in the determination of which alternate path data should use in the case of a congested network.

As per claim 5, as closely interpreted by the Examiner, Maccabee, Roytman and Medhat teach all that is described above that is similar in scope to claim 1, Roytman further teaches representing the component information by one or more component parameters and wherein the component parameters are mapped into the service parameters, (e.g. col. 6, line 40 – col. 7, line 35, “*network alarms, alarm services module*” & col. 7, lines 46 – 65, “*critical, major, warning, minor...* ”). It would have been obvious to one skilled in the art at the time the invention was made to combine Roytman with Maccabee and because of similar reasons as stated above.

As per claim 6, as closely interpreted by the Examiner, Maccabee, Roytman and Medhat teach all that is described above that is similar in scope to claim 1, Roytman further teaches determining parameters with predetermined service levels, (e.g. col. 6, line 40 – col. 7, line 35, “*network alarms, alarm services module*” & col. 7, lines 46 – 65, “*critical, major, warning, minor...* ”), but does not specifically teach whether service levels are satisfied by comparing service whether service levels are satisfied by comparing service. Koperda teaches whether service levels are satisfied by comparing service parameters, (e.g. col. 1, line 65 – col. 2, line 41 & col. 4, lines 2 – 64, “*collects and reports statistics for level of service*”). It would have been obvious to one skilled in the art at the time the invention was made to combine Koperda with the combine system of Maccabee, Roytman and Medhat because of similar reasons stated above.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maccabee and Roytman as applied to claim 23, and in further view of Bhoj et al. (6304892) (hereinafter Bhoj).

As per claim 25, as closely interpreted by the Examiner, Maccabee, Roytman and Medhat teach all that is described above that is similar in scope to claim 23, Maccabee further teaches monitoring the service level of the service to monitor the business process, (e.g. col. 2, lines 21 – 25 & col. 3, lines 25 – 38), but neither Maccabee, Roytman and Medhat specifically teach determining a service level of the service, the service level being defined by a service level agreement. Bhoj teaches determining a service level of the service, the service level being defined by a service level agreement, (e.g. col. 6, line 62 – col. 7, line 7); and monitoring the service level of the service to monitor the business process, (e.g. col. 6, line 62 – col. 7, line 7 & col. 7, lines 39 – 47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Bhoj with the combine system of Maccabee, Roytman and Medhat because when two system agree on a specific service level, the service provider could be guaranteeing 100% availability of the backbone of the service provider as well as the customer access circuit ordered by the service provider, making for a high level of service.

Response to Arguments

Applicant's arguments filed 03/07/2006 have been fully considered but they are not persuasive.

In the Remarks, Applicant argues in substance that Neither Maccabee or Roytman teaches or suggests subsequently analyzing the correlated alarms as set forth in the claims. At best, the references Maccabee and Roytman (upon which the Examiner appears to rely to teach these particular features of the claimed invention) individually appear to perform a single operation of analyzing alarms to produce correlated alarms.

As to the first Remark, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., subsequently analyzing the correlated alarms) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, Applicant admits that the prior art teaches the claim language as set forth above, (analyzing alarms to produce correlated alarms). Also, Maccabee teaches subsequent analyzing of alarms, (e.g., col. 8, lines 27 – 57, “...*correlation data subsequently used by the system to associate the event with other events into transactions*”), and as also seen throughout the prior art.

In the Remarks, Applicant argues in substance that the references relied upon by the Examiner do not pertain determining a performance index of the grade of service being provided in a particular service level management domains as disclosed in claim 23 and similarly in claim 27. For example, Roytman (upon which the Examiner relies to teach this particular aspect of the invention) apparently pertains to a severity level of an alarm, “such as, ‘critical’, ‘major’,

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‘warning’, ‘minor’, ‘normal’, and ‘indeterminate’.” As would be appreciated by one of ordinary skill in the art, these are relevant to a severity of a particularly alarm for particular network device and not applicable to a particular grade of service provided by a collection of network devices within the service level management domain.

As to the second Remark, Applicant is asked to draw their attention to their claim language, in which it is noted that the performance index is not specifically defined in the claim nor the specification as to what the “index” could be. Furthermore, the “value” in a “range of values” is not specifically defined. Also, Applicant refers to “grade” as also being a “level”. Roytman teaches such “level” which are utilized to the severity of the network or the quality. As seen in the prior art of Roytman, the severity level can be “normal” which is connected to a level or grade at which the network should be operating at or each separate node in the network, for example a server maybe working at a normal level given for their services. Also, the “range” of severity levels given by Roytman give the interpretation of how the network could be slowly degrading in service, i.e., “normal”, “minor”, “warning”, “major” and “critical”. Therefore, Roytman teaches the claims as broadly interpreted by the claim language.

In the Remarks, Applicant argues in substance that the other claims that are dependant from the features of claim 23 and the prior art references utilized in the rejections under 103(a) fail to teach or suggest all the claimed features deficient from the references of Maccabee, Roytman and Medhat and therefore the rejections should be withdrawn therefrom.

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As to the third Remark, Examiner would like to draw the Applicant's attention to the above responses to their remarks, for the prior art does teach the limitations of the claim language as stated by the Applicant.

(10) Response to Argument

In the Arguments, Appellant argues in substance that the invention, as recited in claim 1, "mapping... events into alarms includes "detecting-events of a select type" and "mapping such events into alarms." Assuming *arguendo* that Maccabee teaches event "mapping," Maccabee teaches mapping events into transactions. As would be apparent to one of ordinary skill in the art, "transactions" and "alarms" represent different things. For instance, a "transaction" represents a series of processing stages associated with a task, request, application, etc., whereas an "alarm" is based on an operational characteristic of a network resource.

In addition, the references relied upon, either alone or in combination, fail to teach or suggest at least the feature of "transmitting the alarms.., to an alarm correlation agent, which analyzes the alarms to produce correlated alarms," as recited in claim 1, for example. The Examiner alleges that Maccabee teaches this feature at col. 7, line 61 - col. 8, line 26. More particularly, the Examiner alleges by correlating events into transactions, Maccabee teaches "analyz[ing] the alarms to produce correlated alarms" because events sometimes include "additional correlation data useful for later associating the event with other events to form transactions." Final Action at 3, paragraph 6.

Following the Examiner's reasoning, which alleges that "transactions" are the same as "alarms," Maccabee would have to describe a system that analyzes the transactions to produce "correlated"

transactions. However, Maccabee fails to teach or suggest analyzing transactions or correlating transactions to produce correlated transactions. Rather, Maccabee only analyzes events to form transactions.

As to the first argument, in which Appellant states that “an alarm is based on an operational characteristic of a network resource”, is not exactly true, i.e., there are sections left out by the Appellant. The Appellants invention monitors operational characteristics and these characteristics that are detected are first “events” then mapped to “alarms”. There is no teachings in the claims that would suggest that an alarm is anything else but a message as to what has happened in a network, either bad or good. As is stated in Maccabee, an event is a change in state of the system as an example stated in column 7, lines 38 et seq.,

*“As depicted, sensors (200) interact with the software and hardware components through which the business transaction is processed, glean changes in state that result in the generation of events (205). **Examples of sensors include software written to interact with software exits by registering for notification of select conditions (e.g., Lotus Notes Extension Manager); software and/or hardware written to intercept activities taken by the business transaction's software and/or hardware (e.g., interception DLL's or shared libraries, or analysis of output logs or alert messages); or insertion of software and/or hardware probes within the business transaction's software and/or hardware (e.g., ARM API calls within business transaction source code).** If the change in state is such that an event can be generated, the Sensor further checks control rules (FIG. 2) e.g., filters to determine if it may generate the event.”*

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As can clearly seen the “operational characteristics” of a software and/or hardware is taken into account and an event is generated. Further into column 7 and into column 8 it is taught that the events that are generated are forwarded from a processor(s) to their agents, (e.g., col. 8, lines 25 – 26, “Processors also forward the events they generate to their Agents (FIG. 2).”). Maccabee goes on further to discuss how events are correlated and collated with transactions based on logic contained within transaction generation rules. Furthermore, as stated in column 8, lines 33 – 40, *“Correlation data can be any data deemed to be appropriate for later event correlation and collation within Transaction Records, and/or for report generation (e.g., to service selection requests for specific transaction records). **Transactions are collections of related or linked events and/or other transactions**. The event correlations (305) are based on common data attributes (correlation data) found within the events (205).”* This would mean that one event could be correlated to a transaction and then linked to another transaction. Therefore, a type of analyzing of data would have to take place in order to “correlate” events to transaction and/or transactions to transactions, all of which are based on the change in state of a “network operational characteristics”. Respectfully, Appellant is incorrect in assuming Maccabee does not teach or suggest analyzing transactions or correlating transactions to produce correlated transactions, as established above. Furthermore, when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to

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know something about the art apart from what the references disclose. In re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962). The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

In the Arguments, Appellant argues in substance that Roytman teaches "transmitting the alarms . . . to an alarm correlation agent, which analysis the alarms to produce correlated alarms" at col. 5, lines 23-55. However, the cited portions of Roytman merely relate to monitoring the state of various devices using an agent program (col. 2, lines 14-23). Even assuming arguendo that Roytman teaches generating alarms, Roytman nonetheless fails to teach or suggest an alarm Correlation agent, which analyzes the alarms to produce correlated alarms," as recited in claim 1. Rather, Roytman logs alarms in a database and displays the alarms for an operator to view (col. 6, line 53 - col. 7, line 21). However, Roytman does not teach or suggest "transmitting the alarms... to an alarm correlation agent, which analyzes the alarms to produce correlated alarms,, as recited in claim 1. Medhat fails to cure these deficiencies of Maccabee and Roytman. For at least this reason, the rejection is improper.

The references relied upon, either alone or in combination, also fail to teach or suggest at least the feature of "transmitting the correlated alarms to an enterprise management system to analyze, across a network, causes of the correlated alarms," as recited in claim 2, for example. The Examiner alleges that Roytman teaches this feature at col. 2, lines 34-51. However, the Cited

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passage relates to a module that "maps each managed-object-based alarm to a corresponding node in a topology database."

As to the second argument, Examiner would like to draw the Appellant's attention to the prior art of Roytman, specifically columns 5 – 7. It is stated in column 5, line 25 et seq. that a manager node may download the information that pertains to the alarms from the respective agents. This is also apparent in line 57 of column 5. Therefore, in the combination of Maccabee and Roytman, Maccabee's correlation that happens at the agent is then transmitted to Roytman's manager that would keep other records of alarms and/or events that happen in the network in their alarm log database 500. Although it appears that Roytman interchangeably uses events and alarms to mean the same thing, it is stated in column 6, line 55 that the agents generate events or traps, that could generally be referred to as alarms, from a response to conditions, which could be consider events that happen, which occur in the resources with which they are associated. As further noted above, it is Maccabee that teaches the correlated alarms and what might have caused the change in state as described in the cited areas above and herein. In Maccabee, column 14, lines 30 et seq., it is stated that the links between the events and transactions take place and that the T1, T2 and T3 are transactions or specific components that caused the event to happen as seen in T3, "ServerAccept" as once example. As can be seen in Figs. 11 – 14, with emphasis on figure 14, and the supporting text, Maccabee teaches the claimed language. Furthermore, Roytman also teaches what may have cause the alarm as stated in column 8, lines 22 et seq.,

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*"The alarms can also be filtered to select only those that match selected criteria. The criteria include managed **object instance or the device triggering the alarm**; managed object class or the type of device or resource generating alarms; alarm state or severity and event type, such as communications, Internet, etc."*

Therefore, the combination of Maccabee's and Roytman's read on the Appellant's claim language.

In the Arguments, Appellant argues in substance that the prior art of Roytman does not teach, "determining from the operational characteristics a value in the range of values, the value being a performance index of the grade of service associated with the service level management domain".

As to the third argument, Examiner would like to draw the Appellant's attention to Figures 6 and 7, where it is very clear that Roytman teaches a value in the range of values, i.e., critical, major, minor, etc, (e.g., col. 7, lines 54 et seq.). The Appellant appears to assume that the value has to be a numerical one. There is no such language in the claim and can therefore be interpreted in a broader sense. Furthermore, if their network is monitored under all the same rules for every device that would mean that their domain has a specific grade of service that is monitored by management and therefore it is understood that the network must operate under a specific level of service and if not an alarm is logged, as is taught by the prior art.

In the Arguments, Appellant argues in substance that there is no suggestion for combining the references in the prior art and that the reasons for combining Roytman and Maccabee are improper.

As to the last argument, it is clear that the teachings of Roytman would be obvious to combine with Maccabee, for one reason storing alarm information at a central location gives the management system the ability to view the different changes in the network, log then, and fix any problems that may occur in the network while keeping track of the status of network problems, (e.g., col. 7, lines 65 et seq.). Examiners motivation for combining is proper in view of the Supreme Court decision of KSR International Co. v. Teleflex Inc. et al.

Therefore, the rejection still stands.

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

DE 

Conferees:


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